

**REMARKS**

In this Amendment, Applicant has cancelled Claims 6 – 8, without prejudice or disclaimer, and amended Claims 1 – 5 and 9 – 18. Claims 1 – 5 and 9 – 18 have been amended to overcome the rejection and further specify the embodiments of the present invention. It is respectfully submitted that no new matter has been introduced by the amended claims. All claims are now present for examination and favorable reconsideration is respectfully requested in view of the preceding amendments and the following comments.

**REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH:**

Claim 9 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

It is respectfully submitted that in view of presently claimed invention, the rejection has been overcome. In particular, claim 9 has been amended to specify that “the plurality of openings on the trench element are interconnected to form an elongate slot and each of the plurality of the openings is an enlarged hole at discrete locations along the elongated slot.” Therefore, it is clear that the elongate slot has a number of enlarged open portions at discrete locations along the slot. This aspect of the invention is illustrated, inter alia, in Figs 6(a) and 6(b), and described, inter alia, on page 8 line 9 to page 9 line 5 of the specification.

Therefore, the rejections under 35 U.S.C. § 112 second paragraph have been overcome. Accordingly, withdrawal of the rejections under 35 U.S.C. § 112 second paragraph is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102:

Claims 1 – 4 and 6 – 18 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Clarke et al. (US 3,426,659), hereinafter Clarke.

Applicant traverses the rejection and respectfully submits that the present-claimed invention is not anticipated by the cited reference. More specifically, Claims 6 – 8 have been cancelled, without prejudice or disclaimer. Therefore, the rejection to Claims 6 – 8 is moot. In addition, Claim 1 has been amended to further specify that “the trench element comprises a plurality of openings; and the cover member comprises a protrusion in connection with the cover member and protruding from an underside of the cover member for engagement in one of the plurality of openings corresponding to one of the plurality of discrete locations.”

Clarke discloses that the cover 12 includes a plurality of grating members 14 which span an excavation 10. The cover 12 also includes a hollow tube 19, a stem 22 and a jack head 23 to anchor the cover 12 within the excavation 10. A pin 24 is extendable through an aperture in the stem 22 and an aperture in the tube 20 (See Fig. 1, col. 2, lines 37 to 47).

It is respectfully submitted that Clarke fails to disclose or teach the grating members 14 having a protrusion which is connected with the grating member and protrudes from an underside of the grating members 14 for engagement in one of the apertures of the stem 22. The pin 24 appears to be a separate element which is not connected in any way to the grating members 14. In particular the pin 24 is not a protrusion which protrudes from the underside of the grating members 14 (See Fig. 1, col. 2, lines 37 to 47). Applicant respectfully submits that Clarke does not disclose all of the features of Claim 1 as presently amended. Claims 2 – 5 and 9 – 18 also include the same features as they depend on Claim 1.

Therefore, the newly presented claims are not anticipated by Clarke and the rejection under 35 U.S.C. § 102 (b) has been overcome. Accordingly, withdrawal of the rejections under 35 U.S.C. § 102 (b) is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103:

Claim 5 has been rejected under 35 U.S.C. § 103, as allegedly being obvious and unpatentable over Clarke in view of Pellegrino et al (US 6,422,784), hereinafter Pellegrino.

Applicant traverses the rejection. It is respectfully submitted that in view of the presently claimed invention, the rejection has been overcome. More specifically, Claim 1 has been amended to further includes that “the trench element comprising a number of openings; and the cover member comprising a protrusion protruding from an underside of the cover member for engagement in one of the openings corresponding to a discrete location.” By its dependency on Claim 1, Claim 5 includes these features.

It is respectfully submitted that none of the cited referenced – Clarke or Pellegrino – alone or in combination teaches the embodiments of the invention as presently defined in Claim 5. In addition, as recognized by the Examiner, Clarke fails to disclose or teach locking means that comprises a fixing pin extendable through an opening in the trench element and an aligned opening in the cover member. Although Knudson discloses locking means, there is no motivation to combine with Clarke or Pellegrino to achieve the invention as currently claimed in Claim 5. Nowhere in prior art has suggestion or incentive to modify Clarke or Pellegrino to achieve the invention as presently claimed. Even if they are combined, they do not disclose or teach the invention as presently claimed. One of ordinary skilled in the art would not discern the present invention at the time of its invention.

Therefore, the rejection under 35 U.S.C. § 103 has been overcome. Accordingly, withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

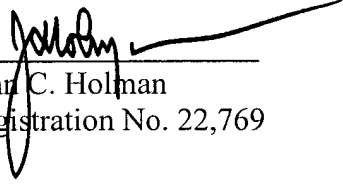
Having overcome all out standing grounds of rejection, the application is now in condition for allowance, and prompt action toward that end is respectfully solicited.

Respectfully submitted,

JACOBSON HOLMAN PLLC

Date: June 16, 2004  
(202) 638-6666  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Atty. Dkt. No.: P69223US0

By

  
John C. Holman  
Registration No. 22,769